IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE No. 80-4999 (02)

THOMAS P. POMEROY, individually

Plaintiff,

v.

SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY, a foreign corporation, and JOEL D. WARE,

Defendants.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES FOR INTENTIONAL, TORTIOUS ACTIONS BY UTILITY DESIGNED AND CALCULATED TO MAINTAIN *DE FACTO* MONOPOLY OF GOVERNMENTAL TELEPHONE SUPPLY BY INTIMIDATING, COERCING AND DEFAMING GOVERNMENT EMPLOYEE IN HIS ATTEMPT TO PERFORM HIS DUTIES IN FURTHERANCE OF THE PUBLIC GOOD AND FOR INVASION OF PRIVACY AND TORTIOUS INTRUSION INTO PLAINTIFF'S EMPLOYMENT RELATIONSHIP.

PLAINTIFF, Thomas P. Pomeroy, sues Defendants, Southern Bell Telephone & Telegraph Company ("Southern Bell"), a foreign corporation, and Joel D. Ware, jointly and severally, and alleges:

1. This is an action for damages exceeding $10,000, exclusive of interest and costs.

2. Thomas Pomeroy is *Sui Juris*, and is a citizen and resident of Miami, Dade County, Florida.

3. Southern Bell is a foreign corporation registered to do business in Florida, with offices located at 666 Northwest 79th Avenue, Miami, Dade County, Florida.

4. Joel D. Ware is *sui juris*, and is a citizen and resident of Dade County, Florida.

5. Since 1976, Pomeroy has been employed by the General Services Administration, Telecommunications Division, of Metropolitan Dade County, Florida, where he is a supervisor in charge of 44 employees.

6. In the period September 19, 1976, through the present, as Supervisor for the Telecommunications Division, Pomeroy, with, by and through his staff, evaluated all bids for three Dade County projects, known as the Regional Data Processing and Communications Center, the 911 Automatic Call Distributor, and the Public Defender's Office Switching System. For all three projects, Southern Bell's bids were neither the lowest nor the most completely compliant with Dade County requirements. For these and other good and valid reasons, Southern Bell's bids were not accepted by the County.

7. In 1979, displeased with Pomeroy's evaluations, concerned that its long-term *de facto* monopoly of Dade County telephone equipment might be endangered, and wrongfully intending to intimidate Pomeroy's superiors so that they would feel constrained to doubt or disregard future Pomeroy recommendations, Southern Bell commenced to undermine his position with his superiors. Both orally and in writing, Southern Bell Vice President Joel D. Ware, individually and as an agent and servant of Southern Bell, acting within the course and scope of his employment and authority, falsely and repeatedly accused Pomeroy of being "grossly biased" against Southern Bell.

8. On April 12, 1979, by letter sent to Roger Carlton, Executive Assistant to Dade County Manager Merritt Steirheim (copied to Steirheim himself and to Steirheim's other Executive Assistant, William Talbert, and also copied to the then Southern Bell President, J.M. Brown), Ware falsely stated that the evaluations of the County Communications Evaluations Committee were "being grossly biased against Southern Bell by Tom Pomeroy."

9. Ware further stated to Carlton that, "I don't believe you condone this practice of allowing Southern Bell manage-

ment to be put in embarrassing situations as a result of apparent unobjectivity on the part of staff."

10. A copy of Ware's April 12, 1979 letter is annexed and made a part of this pleading as Exhibit A.

COUNT I

CLAIM FOR LIBEL AGAINST SOUTHERN BELL

11. Plaintiff realleges paragraphs 1 through 10, inclusive.

12. Southern Bell deliberately and maliciously published false and defamatory written statements about Pomeroy. These statements are libelous *per se*, in that they relate to matters incompatible with Pomeroy's trade, professional, and business relations and obviously tending to subject him to distrust, disgrace, and obloquy.

13. Southern Bell made the above statements with knowledge that they were false and/or with reckless disregard for whether they were false, with the purpose and intention of destroying Pomeroy's reputation and his effectiveness as a public servant.

14. As a result of Southern Bell's false and malicious statements, Pomeroy suffered damages for injury to reputation, mental suffering, and other damages.

15. Southern Bell is therefore liable to Pomeroy for nominal damages, general damages, compensatory damages, prejudgment interest, attorney's fees and costs.

16. Since, among other things, it was intent upon preserving, extending and maintaining its improper *de facto* monopoly of County telephone equipment supply through intimidation of public officials, Southern Bell's actions were undertaken recklessly, willfully, wantonly, maliciously and/or with gross disregard for Pomeroy's rights.

17. Such actions, permitted without rebuke, would encourage others to engage in similarly reprehensible misconduct;

government simply cannot perform its duties where there are wrongful and improper intrusions into its processes, and government employees and officials are badgered, bullied, muscled and initmidated by false and personal attacks upon their competence and integrity.

18. Southern Bell is therefore also liable to Pomeroy for punitive damages in such amounts as bear a reasonable and functional relation to Southern Bell's own financial resources but, in any event, in excess of $1,000,000.

COUNT II

CLAIM FOR SLANDER AGAINST SOUTHERN BELL

19. Plaintiff realleges paragraphs 1 through 13, inclusive.

20. Southern Bell deliberately, maliciously and repeatedly uttered false and defamatory statements about Pomeroy relating to matters incompatiable with Pomeroy's trade, professional, and business relations, and obviously tending to subject him to distrust, disgrace, and obloquy.

21. The exact content of these statements is not yet known to Pomeroy, but their general, defamatory content and intent are described by Ware himself in Exhibit A.

22. Southern Bell made these statements with knowledge that they were false and/or with reckless disregard for whether they were false, for the purpose of destroying Pomeroy's reputation and effectiveness as a public servant.

23. Plaintiff realleges paragraphs 14 through 18, inclusive.

COUNT III

CLAIM FOR LIBEL AGAINST WARE

24. Plaintiff realleges paragraphs 1 through 14, inclusive.

25. Ware deliberately and maliciously published false and defamatory written statements about Pomeroy. These statements are libelous *per se*, in that they relate to matters incompatible with Pomeroy's trade, professional, and business

relations, and obviously tending to subject him to distrust, disgrace, and obloquy.

26. Ware made the above statements with knowledge that they were false and/or with reckless disregard for whether they were false, for the purpose of destroying Pomeroy's reputation and his effectiveness as a public servant.

27. Plaintiff realleges paragraphs 15 through 18, inclusive.

COUNT IV

CLAIM FOR SLANDER AGAINST WARE

28. Plaintiff realleges paragraphs 1 through 13, inclusive.

29. Ware deliberately, maliciously and repeatedly uttered false and defamatory statements about Pomeroy relating to matters incompatible with Pomeroy's trade, professional, and business relations, and obviously tending to subject him to distrust, disgrace, and obloquy.

30. The exact content of these statements is not yet known to Pomeroy, but their general content and intent are described by Ware himself in Exhibit A.

31. Ware made these statements with knowledge that they were false and/or with reckless disregard for whether they were false, for the purpose of destroying Pomeroy's reputation and effectiveness as a public servant.

32. Plaintiff realleges paragraphs 15 though 18, inclusive.

COUNT V

CLAIM AGAINST SOUTHERN BELL FOR DURESS AND COERCION TO PREVENT A GOVERNMENT EMPLOYEE FROM PERFORMING HIS DUTIES

33. Plaintiff realleges paragraphs 1 through 13, inclusive.

34. The foregoing acts constitute unlawful and improper duress and coercion, perpetrated for the purpose of maintaining, extending and strengthening Southern Bell's *de facto*

monopoly over governmental telephone supply by unlawfully preventing, impeding and hindering a government employee from performing his duties in furtherance of the public good.

35. Plaintiff realleges paragraphs 15 through 18, inclusive.

COUNT VI

CLAIM AGAINST WARE FOR DURESS AND COERCION TO PREVENT A GOVERNMENT EMPLOYEE FROM PERFORMING HIS DUTIES

36. Plaintiff realleges paragraphs 1 through 13, inclusive.

37. The foregoing acts constitute unlawful and improper duress and coercion, perpetrated for the purpose of maintaining, extending and strengthening Southern Bell's *de facto* monopoly over governmental telephone supply by unlawfully preventing, impeding and hindering a government employee from performing his duties in furtherance of the public good.

38. Plaintiff realleges paragraphs 15 through 18, inclusive.

COUNT VII

CLAIM AGAINST SOUTHERN BELL FOR UNLAWFUL RESTRAINT OF TRADE AND FOR MONOPOLIZATION FOR INTENTIONALLY ATTACKING AND THREATENING GOVERNMENT EMPLOYEE WITH THE PURPOSE OF COERCING AND INTIMIDATING EMPLOYEE'S SUPERIORS AND THEREBY MAINTAINING, PROMOTING, AND EXTENDING IMPROPER MONOPOLY AT GOVERNMENT TELEPHONE SUPPLY

39. Plaintiff realleges paragraphs 1 through 13, inclusive.

40. Alternatively or cumulatively, the foregoing attacks upon Pomeroy were part of an ongoing effort to preserve, protect, and defend Southern Bell's *de facto* monopoly by the chilling and intimidating effect that attack would have upon Pomeroy's superiors up to and including the County Manager.

41. Southern Bell's ongoing political lobbying and pressure with reference to Dade County's elected Commissioners, com-

bined with the threat to attack staff personally, would enable Southern Bell to prevent the encroachment of its smaller but much less expensive competitors into the public arena.

42. Exclusion of those competitors has enriched Southern Bell and depleted the public treasury by more than $20,000,000 in the years preceding 1979.

43. For these and other improper reasons, Southern Bell apparently considered Pomeroy an expendable pawn to be sacrificed to protect its improper monopoly.

44. Whatever other privilege Southern Bell had, or may have had, to engage even in otherwise lawful business activities was vitiated by the quality of these acts, in that they were actually malicious, willful, wanton and/or undertaken with gross disregard for Pomeroy's rights.

45. Plaintiff realleges paragraphs 15 through 18, inclusive.

COUNT VIII

CLAIM FOR UNREASONABLE RESTRAINT OF TRADE

46. Plaintiff realleges paragraphs 1 through 13, inclusive.

47. Such actions also violated Florida Statutes, Chapter 542, and under the rule of *So. Fla. R. Co.* v. *Rhoads*, 5 So. 633, 635 (Fla. 1889), and *Hardrives Co.* v. *E. Coast Asphalt Corp.* 166 So. 2d 810 (Fla. 2d DCA 1964) are actionable.

48. Plaintiff realleges paragraphs 43, and 15 through 18, inclusive.

COUNT IX

CLAIM FOR INVASION OF PRIVACY AND OF THE RIGHT TO BE SECURE IN HIS EMPLOYMENT FROM IMPROPER AND OPPRESSIVE INTRUSION.

49. Plaintiff realleges paragraphs 1 through 13, inclusive.

50. The foregoing acts also constitute tortious, wrongful invasion of Pomeroy's privacy and of his right to be secure in

his employment from unwarranted, improper and oppressive intrusion.

51. Plaintiff realleges paragraphs 15 through 18, inclusive.

WHEREFORE, Thomas P. Pomeroy sues Southern Bell Telephone & Telegraph Company and Joel D. Ware, jointly and severally, for nominal, general and compensatory damages in excess of $10,000 exclusive of interest and costs, for prejudgment interest, for attorney's fees and costs, and for punitive damages in excess of $1,000,000.

Dated this 18th day of March, 1980.

BAILEY & DAWES,
a professional association
Attorneys for Plaintiff
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, FL 33131
(305) 374-5505

/s/ Guy B. Bailey

and

/s/ Sara Soto

J. D. WARE
666 N.W. 79TH AVENUE
MIAMI, FLORIDA 33126

April 12, 1979

EXHIBIT A

PRIVATE

Mr. Roger Carlton
Executive Assistant
County Manager
Metropolitan Dade County
73 West Flagler Street
Miami, Florida 33130

Dear Roger:

I have previously expressed to you that the evaluations by the County Communications Evaluation Committee *are being* grossly biased against Southern Bell by Tom Pomeroy. I have personally reviewed the details of some of these evaluations and formed this opinion.

I was shocked today to find an additional impact his evaluations are having on Southern Bell. The attached *County* evaluation sheet was attached to a proposal on a competitive case with one of our business customers.

Roger, I don't believe that you condone this practice of allowing Southern Bell management to be put in embarassing situations as a result of apparent unobjectivity on the part of staff.

Joel

Attachment

cc: Mr. Merrett Stierheim
Mr. Bill Talbert
Mr. J. M. Brown

PROPOSAL EVALUATION

PUBLIC DEFENDERS TELEPHONE SYSTEM
NUMERICAL RATINGS

SOUTHERN BELL BASIC BID—	96
SOUTHERN BELL ALTERNATE BID—	99
FLORIDA TELCOM, INC. BID—	121
GENERAL DYNAMICS BID—	106
FLORIDA COMMUNICATIONS CONSULTANTS, INC. BASIC BID—	164
FLORIDA COMMUNICATIONS CONSULTANTS, INC. ALTERNATE BID—	102

EVALUATION COMMITTEE RECOMMENDS—FLORIDA COMMUNICATIONS CONSULTANTS, INC.—BASIC BID

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE No. 80-4999 (CA-02)

THOMAS P. POMEROY,

Plaintiff,

v.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Defendant.

ORDER DISMISSING COMPLAINT WITH PREJUDICE

THIS CAUSE came on to be considered by the Court, after due notice, upon Defendants' Motion to Dismiss with Prejudice and the Court having reviewed the record herein, including the Complaint and Exhibits and the Memoranda of Law, having heard argument of counsel, it is accordingly,

ORDERED AND ADJUDGED as follows:

1. Defendants' Motion to Dismiss with Prejudice is hereby granted.

2. The Complaint herein be and the same is hereby dismissed with prejudice.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida this 31 day of July, 1980.

RECORDED
AUG 5 1980
RICHARD P. BRINKER
Clerk

/s/ Circuit Court Judge

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1982

CASE NO. 80-1809

THOMAS P. POMEROY,

Appellant,

v.

SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY, a foreign corporation, and JOEL D. WARE,

Appellees.

Opinion filed March 9, 1982.

An Appeal from the Circuit Court for Dade County, Edward H. Swanko, Judge

Bailey & Dawes and Jessie C. Jones, for appellant.

Shutts & Bowen and Phillip G. Newcomm and William J. Gallwey, III and Sally M. Richardson, for appellees.

Before SCHWARTZ and PEARSON, DANIEL and JORGENSON, JJ.

SCHWARTZ, Judge.

Stung by successive recommendations by a Dade County evaluation team headed by Thomas Pomeroy against the company's bids on various projects, Joel Ware, a Southern Bell vice-president, wrote to Pomeroy's superior—with copies to the county manager and another county official—which, in essence, complained that he had "grossly biased" the evalua-

tions against Southern Bell.[1] The trial court dismissed Pomeroy's complaint against Ware and Southern Bell, based on the letter, with prejudice. In our view, the allegedly defamatory statements sued upon were no more than expressions of opinion and were therefore properly determined to be nonactionable as a matter of law. From v. Tallahassee Democrat, Inc., 400 So.2d 52 (Fla. 1st DCA 1981); Palm Beach Newspapers, Inc. v. Early, 334 So.2d 50 (Fla. 4th DCA 1976), appeal dismissed, cert. denied, 354 So.2d 351 (Fla. 1977), cert. denied, 439 U.S. 910 (1978).

Affirmed.

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[1] In its entirety, the letter stated:

Dear Roger:

I have previously expressed to you that the evaluations by the County Communications Evaluation Committee *are being* grossly biased against Southern Bell by Tom Pomeroy. I have personally reviewed the details of some of these evaluations and formed this opinion.

I was shocked today to find an additional impact his evaluations are having on Southern Bell. The attached *County* evaluation sheet was attached to a proposal on a competitive case with one of our business customers.

Roger, I don't believe that you condone this practice of allowing Southern Bell management to be put in embarassing situations as a result of apparent unobjectivity on the part of staff.

Supreme Court of Florida

CASE NO. 61,954

District Court Of Appeal, 3d District - No. 80-1809

THOMAS P. POMEROY,

Petitioner,

v.

SOUTHERN BELL TELEPHONE & TELEGRAPH CO., *et al.*,

Respondents.

Friday, July 16, 1982.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ALDERMAN, C.J., BOYD, OVERTON and McDONALD, JJ., concur ADKINS, J., dissents

A True Copy
TEST:
Sid J. White
Clerk Supreme Court
by: Tanya Carroll
Deputy Clerk

TC
cc: Hon. Louis J. Spallone, Clerk
Hon. Edward H. Swanko, Judge
Hon. Richard P. Brinker, Clerk

Jesse C. Jones, Esquire
Mercedes C. Busto, Esquire
Phillip G. Newcomm, Esquire
William J. Gallwey, III, Esquire
Sally M. Richardson, Esquire